Greenwood v Ajal, L.P.
2021 NY Slip Op 32930(U)
August 20, 2021
Supreme Court, New York County
Docket Number: Index No. 157838/2020
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID BENJAMIN COHEN** **PART** **IAS MOTION 58EFM**

Justice

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INDEX NO. 157838/2020

TYSON GREENWOOD,

Plaintiff,

MOTION SEQ. NO. 001

- v -

AJAL, L.P.,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISSAL.

On November 19, 2014, plaintiff Tyson Greenwood signed a one-year lease for apartment 1B (the apartment) at 133 East 7th Street in Manhattan (the building) (NYSCEF Doc. No. 22).[1] His tenancy commenced on December 1 of the same year. Annexed to the lease was a rider that informed plaintiff that the apartment had just been decertified and was no longer subject to rent stabilization. The rider provided the following breakdown:

The prior regulated rent of $665.86
Vacancy allowance of $108.20
Long-term vacancy bonus of $119.70
Individual apartment improvement (IAI) increase of $1617.50[2]
Total new allowable rent of $2511.26.

[1] This Court relies on the copy of the lease that plaintiff filed, since defendant's copy (NYSCEF Doc. No. 14) does not include the two riders which were part of the lease.

[2] The Rent Stabilization Code allows landlords to increase the rent for post-vacancy individual apartment improvements (*Ruggerino v Prince Holdings 2012, LLC*, 170 AD3d 568, 568-569 [1st Dept 2019]; *see* Rent Stabilization Code §§ 2522.4, 2522.8). Expenses for "normal maintenance and repair" do not justify a rent increase (*Matter of 125 St. James Place LLC v New York State Div. of Hous. & Community Renewal*, 158 AD3d 417, 417 [1st Dept 2018]).

(NYSCEF Doc. No. 1, ¶¶ 11-12). Plaintiff alleged in his complaint that the notice of deregulation did not comply with the notice requirements set forth in 9 NYCRR § 2522.5 (c) (1). He further alleged, among other things, that defendant did not inform him of his right to see documentary evidence substantiating the IAI increase (*see* NYSCEF Doc. No. 1, ¶¶ 11-12).

Plaintiff did not sign a renewal lease in 2015, but instead continued to pay $2500 a month in rent as a month-to-month tenant. Plaintiff missed four rental payments between October 1, 2017 and January 1, 2018, making partial payments totaling $3400 in December and January. He subsequently made a partial payment in March 2018. On April 3, 2018, defendant initiated a nonpayment proceeding against plaintiff, alleging that plaintiff owed defendant $13,000 plus interest for back rent (NYSCEF Doc. No. 23).

Initially, plaintiff appeared pro se and made a general denial. After he obtained counsel, however, he prepared a motion to amend the answer (NYSCEF Doc. No. 25). In the motion, which also included a copy of the proposed amended answer, plaintiff noted that a landlord is entitled to an IAI increase of 1/40 of the dollar amount spent on the improvements. To justify the IAI increase of $1617.50, therefore, defendant would have had to spend around $64,700. In its application to the Department of Buildings (DOB) for a permit allowing it to renovate apartments 1B and 3A in the building (NYSCEF Doc. No. 24), however, defendant described the project as including minor plumbing work, the replacement of cabinets, the addition of plaster and paint to match what already was there, and replacements of the tub, toilet, and kitchen sink. The application estimated that the total cost for both apartments would be $18,000, $10,000 of which related to apartment 1B. Plaintiff's proposed answer in the nonpayment proceeding relied on this evidence to claim that defendant improperly inflated the cost of the IAI in order to take the apartment out of its rent-stabilized status. In addition, plaintiff argued that defendant's three-

day notice was improper because, as a month-to-month tenant, plaintiff was entitled to a thirty-day notice of termination.

In June 2018 defendant stipulated to discontinue the nonpayment proceeding (NYSCEF Doc. No. 26). According to plaintiff, he entered into the stipulation on the condition that he be allowed to remain in the apartment. The parties did not agree on a particular rent at that time. Plaintiff sought the rent records for the apartment and learned that "[d]efendant appear[ed] to have filed an exit registration in May of 2019" (NYSCEF Doc. No. 1, ¶ 24). Plaintiff asserts that defendant did not comply with the notice requirements in 9 NYCRR § 2520.11 (u) when it filed this document.

Although defendant alleges that, in February 2020, it sent plaintiff a rent-stabilized renewal lease which set the rent at $2,477, plaintiff contends that he did not receive the same. However, he does acknowledge receipt of a June 23, 2020 letter from defendant, which provided a 30-day notice of termination of plaintiff's tenancy because of his failure to sign the renewal lease. Plaintiff responded by letter on July 17, 2020, stating that he did not receive the renewal lease and seeking more information about the computation of his new rent and his alleged rent-stabilized status (NYSCEF Doc. No. 27; *see* NYSCEF Doc. No. 1, ¶ 26). Defendant then provided plaintiff with a list of alleged improvements allegedly totaling $53,600, along with repair bills totaling $8,000. In addition, the document contained copies of a number of checks, some of which were made out to Alexander Neprel (NYSCEF Doc. No. 13).[3]

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[3] Plaintiff further contends that the City's Department of Buildings does not list Neprel as a licensed general contractor and he is not listed as the contractor on defendant's 2014 permit application. In the complaint, plaintiff alleges that, if Neprel is unlicensed, the work he performed cannot be the basis of any IAIs (NYSCEF Doc. No. 1, ¶ 31 [citing NYS DHCR Operational Bulletin 2016-1 (revised Feb 3, 2020)]). It further alleges that Neprel is related to one of defendant's partners, and therefore he is "subject to the 'common ownership' prohibition

According to the complaint, plaintiff did not receive a response to his letter until mid-August of 2020. Plaintiff further alleges that, before he could respond, defendant served plaintiff with a new 30-day notice of termination of tenancy and commenced a landlord-tenant proceeding shortly thereafter (*see* NYSCEF Doc. No. 18 [*Ajal, LP v Greenwood*, Index No LT-302906-20NY]). Plaintiff alleges that the above facts, taken together, "strongly indicate that Defendant is engaged in a fraudulent scheme to evade the rent laws" (NYSCEF Doc. No. 1, ¶ 34).

Plaintiff filed the summons and complaint in this action on September 24, 2020, asserting causes of action based on rent overcharge, willful overcharge, and a violation of General Business Law (GBL) § 349. He seeks injunctive relief – specifically, the determination of the proper legal stabilized rent and a direction to defendant to provide him with a lease at the stabilized rent; treble damages under 9 NYCRR § 2526.1 (a) (1); and attorneys' fees pursuant to Rent Stabilization Law §26-516(a)(4) and 9 NYCRR §2526.1(d) or, alternatively, under GBL § 349.

In its answer, Defendant denies all allegations of wrongdoing (NYSCEF Doc. No. 3). Defendant maintains that it provided a deregulated lease to plaintiff based on a good faith belief that its IAI was accurate and the apartment was subject to decontrol. Defendant concedes in the answer that it recalculated the rent as $2,447.23 and included this amount in defendant's proposed renewal lease which, it acknowledges, renders the lease subject to rent stabilization. According to the answer, as the result of defendant's alleged computational error in 2014, plaintiff was overcharged $2,061.72 but nevertheless owes defendant $99,700.56 in rent.

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between the landlord and such contractor" (NYSCEF Doc. No. 1, ¶ 31). The parties argue these issues in depth, but this Court need not reach them given the findings herein.

Defendant maintains that, after the $2,061.72 credit, plaintiff owes it a balance of $97,638.84 in back rent. Defendant counterclaims for payment of the said balance plus interest. In addition, defendant asserts a counterclaim for attorneys' fees under the lease.

Plaintiff replied to defendant's counterclaims, denying defendant's entitlement to any relief. As for the first counterclaim, the reply alleges that "Defendant has only served Plaintiff a renewal lease and not a vacancy lease because Defendant, well aware that it is illegally overcharging the Plaintiff, is attempting to avoid disclosing the information required by the Rent Stabilization laws to a tenant with a rent stabilized lease" (NYSCEF Doc. No. 4, ¶ 2). In light of the purported overcharges by defendant, plaintiff denies that he owes defendant $97,638.84. In response to defendant's second counterclaim, plaintiff asserts that the 2014 lease – the only one between the two parties – illegally deregulated the apartment and therefore is void. Accordingly, urges plaintiff in reply, defendant cannot seek attorneys' fees under the lease.[4]

Currently before this Court are defendant's motion for dismissal and/or summary judgment and plaintiff's cross-motion for summary judgment on his first and second causes of action (NYSCEF Doc. Nos. 5, 19). In support of defendant's motion, the affidavit of Barbara Chupa, the authorized signatory of defendant, reiterates defendant's contentions that defendant performed $61,000 of IAIs which, along with the longevity increase and the vacancy increase, entitled defendant to issue a $2,447.23 per month lease to plaintiff in 2014 (NYSCEF Doc. No. 6). As proof of the IAIs, defendant submits the lists it provided to plaintiff prior to the institution of defendant's second Housing Court proceeding. Chupa insists that defendant's original belief that the IAIs took the apartment out of rent-stabilized status was a good faith error. She states that defendant issued the rent-stabilized renewal lease to plaintiff on February 25, 2020 because

[4] The reply also asserts affirmative defenses that this Court need not reach.

it realized its original error. She asserts that defendant maintained the rent ledger and made the overcharge calculations during the regular course of business and, thus, they "conclusively establish[] that Defendant [*sic*] is liable to Defendant for rent, and therefore, Defendant's motion for summary judgment on its first counterclaim should be granted" (*id.*, ¶ 23).

Counsel's affirmation reiterates these contentions. He argues that plaintiff's first cause of action, alleging that the apartment is rent stabilized, fails to state a claim because defendant concedes this fact. Counsel argues that plaintiff's second cause of action, for rent overcharge, must be dismissed because of plaintiff's alleged debt for back rent. Further, counsel argues that defendant is entitled to judgment in the amount of $97,638.84, plus interest, on its first counterclaim, and is entitled to summary judgment on its second counterclaim, for attorneys' fees, and that a hearing should be held to determine the amount of fees owed.

Plaintiff submits an affidavit in support of his cross-motion (NYSCEF Doc. No. 21). He emphasizes that, in its 2018 Housing Court case against him, defendant sought the amount set forth in the original lease, and it did not present documentary evidence to show how it calculated the rent in 2014. Further, he maintains that defendant did not provide this proof after plaintiff amended his answer, but instead discontinued the eviction proceeding. Although the parties signed a stipulation of discontinuance in June 2018 with the understanding that defendant would provide proof of the proper legal rent and that the parties would settle their dispute, defendant did not do so. Instead, without explanation or support, it issued the challenged renewal lease. Plaintiff claims that defendant acted in bad faith insofar as it did not provide support for its deregulated rent in 2014, did not provide evidence justifying such rent in response to plaintiff's proposed amended answer in the Housing Court proceeding, and did not explain its alleged miscalculation in 2014. He challenges defendant's attempt to characterize him as a rent-

stabilized tenant since 2014, since he signed a lease that expressly stated the apartment was deregulated and that he continued as a month-to-month tenant thereafter. Further, plaintiff asks this Court to consider only those increases that defendant supports with both check number 4938 and the cost affidavit defendant filed with DOB. As stated, plaintiff contends that check numbers 4981 and 5057, dated July 10 and October 2, 2014, respectively, should be disregarded since "these dates do not match the DOB permit" (*id.*, ¶ 22). Plaintiff also points out that, according to defendant's own records, the checks for repairs – for $3800 and $4200 – cannot be used in computing a rent increase. Plaintiff asserts that, even if this Court denies his cross-motion for summary judgment, it should not grant defendant's motion given "the contradictions set forth in Defendant's own submissions and . . . the paucity of facts and evidence . . . that could support any rent increase" (*id.*, ¶ 27).

Plaintiff also submits his counsel's affirmation, which substantially reiterates plaintiff's arguments (NYSCEF Doc. No. 20). According to counsel, defendant is not entitled to relief under CPLR 3211 because the documentary evidence is not sufficient. Counsel asserts that Chupa's affidavit is self-serving since she works for defendant. He argues that the supposed documentary proof also does not satisfy defendant's burden because it does not explain how defendant miscalculated the IAIs in 2014, how defendant reached the new IAI total of $61,000, why all the unredacted checks it submits are to Neprel, or what work each check covered (citing *Dixon v 105 W. 75th St. LLC*, 148 AD3d 623 [1st Dept 2017]). Counsel maintains that defendant must, but does not, distinguish between renovations, repairs, and normal maintenance, and he notes that, because only Neprel received payments from defendant, there is no record of how much was spent purchasing fixtures, appliances, and other improvements from outside vendors.

Counsel further asserts that the evidence supports summary judgment in plaintiff's favor. He contends that, because defendant represented to DOB that it would spend approximately $10,000 on IAIs but represented to plaintiff that it spent $64,700, this Court should accept defendant's statements to DOB (*citing, e.g.*, *Amwest Realty Assoc., LLC v Sargeant*, 2019 NY Slip Op 30136 [U], **11-12 [Civ Ct, NY County 2019]). Using plaintiff's counsel's computations, the affirmation asserts that the actual legal rent in 2014 was $1,054 per month.[5] Plaintiff therefore seeks summary judgment setting his rent at this amount, granting him overcharges for the last four years, and awarding treble damages for the last two years. Finally, plaintiff argues that attorneys' fees should not be awarded because defendant relies on a provision in the 2014 lease, which improperly deregulated the apartment, thus rendering it void, and because defendant has not shown that plaintiff defaulted under the deregulated lease.

Defendant opposes the cross-motion and replies by reiterating its original arguments. Defendant argues that, since Rent Stabilization Law § 26-516 (g) does not require it to provide any records relating to rentals of the apartment prior to 2016, it does not have to produce proof of the cost of the AIAs or of payments relating to them. Defendant maintains that plaintiff's contention that defendant improperly included repair work in its IAIs is conclusory and is not supported by an expert affidavit. Defendant also asserts that, because plaintiff did not see the apartment before the improvements, he cannot know how much defendant spent on repairs or how much the improvements cost. It further maintains that it is irrelevant that its alleged

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[5] As for the alleged back rent of $97,638.84, plaintiff contends that defendant did not demand the overdue rent for more than six months, rendering it stale and uncollectible (citing *City of New York v Betancourt*, 79 Misc 2d 907 [App Term 1st Dept 1974]). This Court notes that, although this issue is not critical to the resolution of this motion, it would reject the argument. Plaintiff made partial payments during some of the period in dispute, and the parties were in and out of litigation at other times.

expenses of over $60,000 exceeded its estimated expenses of $10,000 because the latter was merely an estimate for DOB. Defendant also includes another affidavit from Chupa, this one stating that she "observed the improvements to the Apartment" and considered "the $61,000 cost of the IAIs [to be] completely reasonable and justifiable" (NYSCEF Doc. No. 30, ¶ 10).[6]

Plaintiff responds that defendant's motion should be denied because it has provided inconsistent statements regarding the cost of the work performed and has not explained the difference between the 2014 and 2020 IAI statements. He further asserts that defendant's proof of IAIs does not constitute documentary evidence for the purposes of CPLR 3211. Plaintiff challenges defendant's contention that it need not show its rent stabilization history, noting that a tenant can challenge his or her apartment's deregulated status at any point. Although a landlord is allowed to estimate the cost of IAIs in its DOB submission, plaintiff claims that defendant was required to close out the permit and, at that time, to certify the cost in an affidavit or explain the increased cost. Plaintiff notes that defendant provides the Chupa affidavits – in which Chupa merely attests that the work looked substantial and that she found the cost to be reasonable -- rather than the affidavit of Neprel, who has firsthand knowledge of the renovations and repairs he made, and he also points out that the defendant does not provide signed statements, a contract for the work, or other substantiating evidence. Plaintiff alleges that this Court can review records for the apartment that go back more than four years because plaintiff has shown sufficient indicia of fraud, and he points to defendant's attempt to retroactively register the apartment as rent-stabilized six years after plaintiff signed the non-stabilized lease as further support. Moreover,

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[6] Defendant also challenges plaintiff's reliance on the Rent Act of 2014. However, plaintiff was referring to the 2014 amendments to the rent laws. Defendant should have realized this, as these were "major amendments to the regulatory scheme governing rent-regulated apartments" (*Portofino Realty Corp. v New York State Div. of Hous. & Community Renewal*, 193 AD3d 773, 774 [2d Dept 2021]).

plaintiff challenges defendant's attempt to rely on the checks it issued to Neprel as evidence that IAIs were made to the subject apartment because defendant may have paid money to Neprel for other purposes as well.

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Lebedev v Blavatnik*, 193 AD3d 175, 182 [1st Dept 2021]; *Wiener v Ga-Ro Die Cutting,* 104 AD2d 331, 333 [1st Dept. 1984]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 [2019]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (*Assaf v Ropog Cab Corp.*, 153 AD2d 520, 521 [1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman*, 3 NY2d at 404; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012]).

After careful consideration, this Court denies defendant's motion. The documentation defendant provides in support of its assertion that it performed $61,000 in IAIs is inconclusive at best. The handwritten and typed lists of purported repairs are not supported by sufficient evidence, such as copies of bills for the materials Neprel allegedly purchased or an affidavit by a party with personal knowledge of the work performed. Moreover, plaintiff is correct that these unsubstantiated lists do not constitute documentary evidence. As plaintiff also notes, the affidavit of Chupa, an employee of defendant who looked at the apartment and claims that it seemed like

around $61,000 had been spent renovating the unit, is self-serving and conclusory and, thus, inadequate on its face.

Additionally, the checks that defendant submits do not support his contention (NYSCEF Doc. No. 13). Defendant submits seven full pages of checks and claims that nine of them relate to IAIs for the subject apartment. Of those, only three checks – check number 4938, for $10,000; check number 4981, for $10,000; and check number 5057, for $3600 – reflect that they are for work on the apartment. Moreover, several of the checks to Neprel specify that they are for work for other parts of the building. For example, check number 4936, for $155, indicates that it was for work performed in apartment 4F. Defendant does not submit any evidence supporting its contention that checks other than those expressly identified as relating to the apartment cover work done at the apartment. Since so many of the checks written to Neprel are for unrelated work, defendant has not shown that the unidentified checks relate to work performed on the apartment. Check numbers 5125-5126, allegedly written for repair work performed at the apartment, also do not indicate what they are for. Further, it is unclear whether the repairs were basic or within the ambit of qualifying IAI work (*see Sandlow v 305 Riverside Corp.*, 69 Misc 3d 893, 912 [Sup Ct, NY County 2020]).

For the reasons above, defendant has not established that it performed $61,000 for repairs to the apartment. Therefore, summary judgment in defendant's favor on the first counterclaim is not warranted. For the same reasons, this Court denies defendant's request for dismissal of plaintiff's second cause of action, for rent overcharge. Defendant also fails to establish its entitlement to summary judgment with respect to its second counterclaim, for attorneys' fees.[7]

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[7] This Court does not reach the issue but notes that, pursuant to 9 NYCRR 2520.12, "[t]he provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with the ETPA, the RSL or this Code,

This Court next considers plaintiff's cross motion for summary judgment. Based on the evidence submitted, it is clear that 1) the apartment was improperly destabilized in 2014 and 2) defendant could not retroactively correct this error and bar examination of the apartment's rental history by filing a rent stabilization form for the unit in 2020. The second of these findings is supported by the First Department's ruling in the recent case of *Casey v Whitehouse Estates, Inc.* (-- AD3d --, 2021 NY Slip Op 04646 [1st Dept 2021]). In *Casey*, the landlords improperly deregulated apartments in the building in question while they simultaneously received J-51 tax benefits.[8] Since the landlords did so before the law was clear on this issue, the First Department acknowledged that they "may have been following the law" (*see id.*, at *3). However, the court further determined that "their 2012 retroactive registration of the improperly deregulated apartments was an attempt to avoid the court's adjudication of the issues and to impose their own rent calculations rather than face a determination of the legal regulated rent within the lookback period" (*id.)*. Although this is not a J-51 case like *Casey*, Defendant's actions here also sought to prevent Plaintiff and this Court from looking at records from before Plaintiff moved in to figure out the last registered rent.

Moreover, as in *Casey*, the landlord's evidence purportedly shows the legal regulated rent but actually relies on defendant's "unilateral calculations and not the actual rent paid" (*id.*). Further, as in *Casey*, plaintiff has made "a colorable claim of fraud" by pointing to defendant's 2020 action in retroactively registering the apartment based on its purported 2014 expenses

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and in such event such provisions shall be void and unenforceable." It appears that, pursuant to this provision, the attorneys' fees provision in the lease may still be effective.

[8] The J-51 tax relief program, which is authorized by Real Property Tax Law 489, provides tax relief to property owners who perform certain eligible work on the property. All of the apartments in buildings receiving such benefits remain under rent stabilization for the duration of the benefits – or longer if the apartments were rent stabilized before the commencement of the program (*Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270, 280 [2009]).

which, as discussed above, are dubious at best (*id.*, at *2).[9] Plaintiff is thus entitled to a declaration that the apartment is rent-stabilized, that it was improperly destabilized in 2016, and that defendant's attempt to retroactively register the apartment in 2020 is invalid.

This Court further determines that a hearing is necessary to determine the proper registered rent (*see Jemrock Realty Co., LLC v Krugman*, 13 NY3d 924, 926 [2010]). Plaintiff's argument that defendant be limited to the $10,000 AIA estimate lacks merit. In fact, the alteration application that plaintiff has filed in support of his motion expressly states that $18,000 is the "*Estimated* Total Cost" for the improvements to apartments 1B and 3A (NYSCEF Doc. No. 24 [emphasis supplied]). Thus, some deviation from the original estimate is permissible. However, for all the reasons this Court has discussed, the explanation of the increase from the estimated cost to the purported actual cost does not appear credible.[10] Therefore, plaintiff's request that his rent be set at $1,054 is denied. Instead, there must be a hearing to consider the evidence and determine the proper IAI increase for the unit. Defendant bears the burden of proof as to all of the alleged IAIs, and it has a particularly high burden concerning the checks not specifically identified as relating to work in the apartment. Defendant also bears the burden of showing that the alleged repairs are includable as IAIs. Once these issues are resolved, the factfinder will be able to calculate the proper rent for each year between 2014 and 2021, using the last registered rent for the apartment of $665.86 and vacancy and long-term vacancy

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[9] This Court also denies defendant's application to dismiss plaintiff's first cause of action. Despite any concession by defendant regarding the rent-stabilized status of the apartment, plaintiff is entitled to a declaration as to its status. This is especially true here, where defendant only filed its rent stabilization form in 2020, after the parties' legal battle commenced, and it now attempts to use the 2020 filing 1) to claim compliance with the rent regulation laws and 2) to block consideration of the apartment's rental history prior to 2016.

[10] Additionally, the job description contained in the application varies dramatically from the scope of work set forth in defendant's statement of its alleged work and costs (NYSCEF Doc. No. 13, at **2-3, 16-19).

allowances of $108.20 and $119.70, respectively. The factfinder also can review the evidence and, placing the burden of proof on defendant, determine whether treble damages are appropriate. Finally, the factfinder can determine whether attorney' fees are to be awarded.

The remainder of the issues raised are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

ORDERED that defendant's motion is denied; and it is further

ORDERED that plaintiff's cross motion is granted to the extent that Plaintiff is entitled to a declaration that the apartment is rent-stabilized, that the apartment was improperly destabilized in 2016, and that defendant's attempt to retroactively register the apartment in 2020 is invalid; and it is further

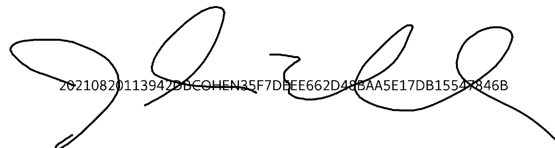
ORDERED and ADJUDGED that 133 East 7th St., apartment 1B, New York, New York is rent-stabilized, that it was improperly destabilized in 2016, and that defendant's attempt to retroactively register the apartment in 2020 is invalid; and it is further

ORDERED that this matter is referred to a Special Referee to hear and report, or hear and determine (if the parties so stipulate in writing), pursuant to CPLR 4317, the amount that defendant spent on legitimate IAIs, the proper stabilized rent Plaintiff is to be charged, whether a party is entitled to attorneys' fees, and whether plaintiff is entitled to treble damages, and if so, the amounts to be awarded for fees and/or treble damages; and it is further

ORDERED that within 30 days of the date of notice of entry of this order, plaintiff is to serve a copy of this order with notice of entry, together with the Special Referee Information Sheet, on the Special Referee Clerk (Room 119) at 60 Centre Street, who is directed to place this

matter on the calendar of the Special Referee's Part (Part 50R) for the earliest convenient date; and it is further

ORDERED that, in the event the parties do not agree to hear and determine, then, in accordance with C.P.L.R. Rule 4403 and 22 N.Y.C.R.R. § 202.44(a), following the filing of the report and notice to each party of the filing of the report, plaintiff shall move to confirm or reject all or part of the report within fifteen (15) days after notice of the filing of the report. If plaintiff fails to do so, then defendant shall so move within thirty (30) days after notice of the filing is given (*see Gould v Venus Bridal Gown and Accessories Corp.*, 148 Misc 2d 589 [Sup Ct, NY County 1990]).



8/20/2021	DAVID BENJAMIN COHEN, J.S.C.
DATE	

CHECK ONE:	☐ CASE DISPOSED		☒ NON-FINAL DISPOSITION	
	☐ GRANTED	☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT	☐ REFERENCE